

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-17146-PEM
)	
DEVAN MYLES MULLINS,)	
)	DECISION AND ORDER OF INVOLUNTARY
Member No. 146466,)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Devan Myles Mullins (respondent) is charged with five counts of misconduct. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

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¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar that were in effect from January 1, 2011, through June 30, 2014. A number of the rules of procedure, including the rules governing defaults, were amended effective July 1, 2014. Nonetheless, because respondent's default was entered before July 1, 2014, the operative rules in this matter are those that were in effect before July 1, 2014.

² If the court determines that any due process requirements is not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice law in this state on June 13, 1990, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

The State Bar filed the NDC in this proceeding on November 8, 2013. On November 8, 2013, the State Bar also served the NDC on respondent at his membership-records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On November 18, 2013, the State Bar received the return receipt for the NDC. The return receipt appears to be signed by Clysta Simanch.

Thereafter, the State Bar (1) mailed a courtesy copy of the NDC to respondent at his membership-records address by first class mail, regular delivery; (2) attempted to reach respondent by telephone at his membership-records telephone number and left a voicemail message for respondent notifying him that disciplinary charges had been filed against him in the State Bar Court; (3) faxed a courtesy copy of the NDC to respondent at his membership-records fax number; (4) emailed a courtesy copy of the NDC to respondent at respondent's private email address on file with the State Bar;³ (5) emailed a courtesy copy of the NDC to respondent at respondent's public email address on file with the State Bar; (6) mailed a courtesy copy of the NDC to respondent at an alternate address that the State Bar found for respondent through an

³ As of February 1, 2010, all attorneys are required to maintain with the State Bar a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

Internet search by first class mail, regular delivery; and (7) attempted to reach respondent by telephone at an alternative telephone number that the State Bar found for respondent through its Internet search. None of the courtesy copies of the NDC sent to respondent was returned to the State Bar as undeliverable or otherwise.

Respondent failed to file a response to the NDC. On January 8, 2014, the State Bar properly served a motion for entry of respondent's default on respondent at his membership-records address by certified mail, return receipt requested. Thereafter, the State Bar filed the motion for entry of default on January 10, 2014. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar Deputy Trial Counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. On January 16, 2014, the State Bar received the return receipt for the motion for entry of default. The receipt was signed by Clysta Simanch on January 14, 2014.

Respondent did not file a response to the motion, and his default was entered on January 31, 2014. The order entering the default was properly served on respondent at his membership-records address by certified mail, return receipt requested. The State Bar Court received the return receipt for the order entering default on February 3, 2014, signed by Clysta Simanch. In the order entering default, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of the order. Respondent has continuously been involuntarily enrolled inactive since that time.

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⁴ All further statutory references are to the Business and Professions Code.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On September 4, 2014, the State Bar properly served a petition for disbarment after default on respondent at his membership-records address by certified mail, return receipt requested. Thereafter, the State Bar filed the petition for disbarment on September 8, 2014. The State Bar reported in the petition that (1) it has not had any contact with respondent since his default was entered on January 31, 2014; (2) there are 13 disciplinary investigations pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments due to respondent's conduct.

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on October 21, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations (but not the charges or conclusions) in the NDC were deemed admitted and no further proof was or is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged on four of the five counts of misconduct and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-O-17146 (Mount Matter)

Counts One and Two. Respondent willfully violated State Bar Rules of Professional Conduct, rule 4-100(A) (failure to maintain client funds in trust account) by failing to maintain \$2,690 in client settlement proceeds in his client trust account. In addition, respondent willfully violated section 6106 (moral turpitude) by misappropriating, dishonestly or through gross

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negligence, \$2,648.12 of the \$2,690 in settlement proceeds for his own use and benefit from about April 2010 through September 6, 2012.

Count Three – charges respondent with willfully violating State Bar Rules of Professional Conduct, rule 4-100(B)(4) (failing to promptly pay out client funds as requested by the client) by not paying his client’s medical bills totaling \$2,690 until September 6, 2012, which was about two and one-half years after respondent received the client settlement funds for his client. Respondent’s duty, under rule 4-100(B)(4), to promptly pay the client’s medical bills did not arise until the client (or the client’s medical providers assuming they had medical liens signed by respondent) requested that respondent use the \$2,690 to pay the client’s medical bills. (*In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, 188 [client request/demand for payment is “an essential element” of a rule 4-100(B)(4) violation]).

According to the NDC, the first time the client (or the client’s medical providers) requested that respondent pay the client’s medical bills was on August 16, 2012. Thus, respondent delayed paying the medical bills from August 16, 2012, to September 6, 2012, which was 22 days. That 22-day delay does not establish a willful violation of rule 4-100(B)(4) by clear and convincing evidence. (*In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 735 [even a six-week delay in paying out settlement proceeds to client “would not, per se, result in a violation of rule 4-100(B)(4)”).) Accordingly, count three is DISMISSED with prejudice.

Count Four – respondent willfully violated State Bar Rules of Professional Conduct, rule 4-100(B)(3) (failing to render appropriate accounts of client funds) by failing to account to his client, as he requested, for \$20,000 in settlement proceeds that respondent received on behalf of the client.

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Count Five – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a substantive response to a State Bar investigation letter regarding the Mount matter.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (a) properly served the NDC on respondent at his membership records address by certified mail, return receipt requested; (b) sent by first class mail courtesy copies of the NDC to respondent both at his membership-records address and at an alternative address obtained through an Internet search; (c) attempted to reach respondent by calling his membership-records telephone number and leaving a voicemail message for him; (d) faxed a courtesy copy of the NDC to respondent at his membership-records fax number; (e) emailed courtesy copies of the NDC to respondent at two different email addresses he had on file with the State Bar; and (f) attempted to reach respondent by telephone at an alternative telephone number for respondent obtained through an Internet search;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite reasonable notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Devan Myles Mullins be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Devan Myles Mullins, State Bar number 146466, be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: December ___, 2014.

PAT McELROY
Judge of the State Bar Court